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10 **STATE OF CALIFORNIA**
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
11 **DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

12 **In the matter of:**) Docket No HWCA '9

13 TALLEY BROTHERS, INC.

14 2007 Laura Avenue
Huntington Park, CA 90255
15 EPA ID No. CAD 009522988,

STIPULATION AND ORDER

Health & Safety Code
Section 25187

16 Respondent.

17

18 The California Department of Toxic Substances Control ("Department") and Talley
19 Brothers, Inc. ("Respondent") enter into this Stipulation and Order ("Order"), and stipulate and
20 agree as follows:

21 **INTRODUCTION**

22 1. Respondent owns and operated a hazardous waste management facility
23 located at 2007 Laura Avenue, Huntington Park, California (the "Property"). Respondent was
24 authorized by the Department to operate a hazardous waste facility on the Property under interim
25 status authorization pursuant to Health and Safety Code section 25200.5.

26 2. On or about May 24, 1994, Respondent discontinued its hazardous waste
27 management operations on the Property. The Department terminated Respondent's interim
28 status authorization, and directed the Respondent to commence closure of the hazardous waste

Facility in accordance with California Code of Regulations, title 22, section 66265. 12. To date, the closure of the facility has not been completed.

3. HWCL Violations.

3.1. On or about June 27, 1995, pursuant to section 25187 of the Health and Safety Code, the Department issued an Enforcement Order, HWCA 94/95-069 ("1995 Enforcement Order") against Respondent. A copy of the 1995 Enforcement Order is attached hereto as Exhibit A. The 1995 Enforcement Order alleged that Respondent violated provisions of the Hazardous Waste Control Law ("HWCL"), Health and Safety Code sections 25100 et seq. and the hazardous waste regulations, California Code of Regulations, title 22, section 66260 et seq. The violations cited in the 1995 Enforcement Order included violations of tank system requirements, financial requirements (including assurances), reporting and record keeping requirements, training and inspection requirements, container requirements, requirements related to plans and analyses, labeling requirements, and permit requirements.

3.2. In the 1995 Enforcement Order, the Department assessed a penalty against Respondent in the amount of \$297,983, for the HWCL violations cited in the order.

3.3. On or about July 10, 1995, Respondent filed a Notice of Defense and requested a hearing on the 1995 Enforcement Order.

4. Hazardous Waste Fees.

4.1. Respondent failed to pay hazardous waste fees owed pursuant to Health and Safety Code sections 25205.2 and 25205.4, for the tax periods from January 1994 to December 1995. Interest on Respondent's liability for hazardous waste fees continues to accrue monthly.

4.2. In 1996, the State Board of Equalization (BOE), which assesses and collects hazardous waste fees on behalf of the Department, placed a tax lien in the amount of \$99,775.00, on the Property to secure Respondent's liability for hazardous waste fees.

4.3. Respondent's liabilities for hazardous waste fees with interest calculated through May 1, 2003, is \$ 151,693.63. (BOE Account Number HF HQ 38-000542-8).

1 5. Jurisdiction. Jurisdiction exists pursuant to Health and Safety Code
2 section 25187.

3 6. Dispute Among the Parties.

4 6.1. A dispute exists between the parties regarding the violations alleged in the
5 1995 Enforcement Order and the outstanding hazardous waste fees.

6 6.2. The parties have engaged in extensive settlement negotiations since 1995.
7 The parties wish to avoid the expense of prolonged and complicated litigation and to achieve a
8 resolution of the disputed claims in furtherance of the public interest.

9 SETTLEMENT OF DISPUTED CLAIMS.

10 7. Matters Covered by This Order.

11 7.1. This Order shall constitute full settlement and release of Respondent's
12 liability for: a) the violations of the HWCL known to the Department as of the effective date of
13 this Order, including the violations alleged in the 1995 Enforcement Order; and b) the hazardous
14 waste fees and accrued interest owed by Respondent prior to the effective date of this Order.
15 The provisions of this paragraph are expressly conditioned on full and complete performance by
16 Respondent of all of the terms and conditions of this Order.

17 7.2. Nothing in this Order shall limit the Department from taking enforcement
18 actions against the Respondent for HWCL violations that are not known to the Department as of
19 the effective date of this Order, or violations that occur or continue after the effective date of this
20 Order, including violations of the closure and financial responsibility requirements in the
21 California Code of Regulations, title 22, sections 66265.111 and 66265.143, that continue after
22 the effective date of this Order.

23 7.3. Except as provided in paragraph 7.1, nothing in this Order shall limit the
24 Department from taking action against the Respondent pursuant to state and federal laws.
25 Specifically, this Order does not settle the Respondent's potential liability under the
26 Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42
27 U.S.C. section 9601 et seq. or the Hazardous Substance Account Act, Health and Safety Code
28 section 25300 et seq.

1 7.4. Nothing in this Order is intended nor shall it be construed to preclude any
2 other State agency, department, board, or entity from taking appropriate enforcement actions or
3 otherwise exercising its authority under any law, statute or regulation.

4 **a. Waiver of Hearing.**

5 8.1. Respondent waives any right to a hearing on the allegations of the 1995
6 Enforcement Order.

7 8.2. Respondent waives any right to a hearing on the hazardous waste fees
8 incurred prior to the effective date of this Order.

9 **9. Admissions.**

10 9.1. Respondent **admits** the allegations in the 1995 Enforcement Order,
11 including the violations in Section 2. Respondent admits that it is liable for penalties in the
12 amount of \$250,000.00, for hazardous waste violations alleged in the 1995 Enforcement Order

13 9.2. Respondent **admits** that it is liable for hazardous waste fees and accrued
14 interest through May 1, 2003, is \$ 151,693.63.

15 10. **Final Administrative Order Imposing Penalties.** This Stipulation shall
16 constitute a final administrative order imposing penalties in the amount of \$250,000 for
17 violations cited in the 1995 Enforcement Order. Respondent waives its right to judicial review of
18 the penalty determination in this final administrative order. The Department may apply pursuant
19 to Health and Safety Code section 25184.1, to the appropriate Superior Court for a judgment to
20 collect the administrative penalty set forth in this paragraph, and Respondent stipulates to entry
21 of such judgment. The Department may take appropriate action to record judgment lien(s)
22 against Respondent for the amount of the judgment.

23 **SCHEDULE FOR COMPLIANCE**

24 11. Respondent shall comply with the following:

25 11.1 **Closure Trust Account**

26 11.1.1 Within fifteen (15) months of the effective date of this Order,
27 Respondent shall submit to the Department a fully executed trust agreement ("the Trust
28 Agreement") establishing the Talley Closure Trust. Such Trust Agreement shall be in the form

1 attached hereto as Exhibit B, except as modified by the written agreement of the Department and
Respondent. The Department shall be the sole beneficiary of the Talley Closure Trust. The
administration of the Talley Closure Trust shall be consistent with applicable trust administration
2 requirements in California Code of Regulations, title 22, section 66265.143(a). The Talley
Closure Trust shall also comply with applicable California statutes and regulations governing
trust administration. The Trust Agreement may be amended as necessary, upon Written approval
of the Department.

3 11.1.2. The Trust Agreement shall provide that the Trustee of the Talley
4 Closure Trust shall be removable by the Respondent, on its own volition or at the direction of the
10 Department, for any violation of the Trust Agreement, this Order or any real or perceived conflict
1 of interest.

1: 11.1.3. The sole and governing purpose of the Talley Closure Trust shall
1: be to pay the costs of closure, investigation and/or remediation of the Property, and the
1: Department's oversight costs incurred at the Property. The Trustee shall expend funds placed in
1: the Talley Closure Trust, with the approval of the Department, in the following order: a) to
1: reimburse Respondent, or fund the Department, for costs of preparing a final closure plan, and
1: costs of implementing a partial closure plan and/or final closure plan for the Property approved
1: by the Department; b) to fund the Department's costs of investigation and/or remediation of the
1: Property; and c) to fund the Department's oversight costs recoverable pursuant to Health and
2 Safety Code section 25 187.2. Reimbursement of costs for preparation of a final closure plan
2 shall not exceed \$50,000. Costs reimbursed pursuant to this paragraph shall not include: a) any
2: money paid, or to be paid to Respondent's employees or any other internal costs incurred by
2 Respondent in conjunction with closure of the Property; or b) any costs incurred by Respondent
2 prior to the effective date of this Order. In the event Respondent fails to comply with this
2 Stipulation, the provisions of this paragraph regarding the order of disbursement shall not apply.

2: 11.1.4. Respondent shall be responsible for the costs of operation of the
2 Talley Closure Trust.

11.1.5. Within fifteen (15) months of the effective date of this Order, Respondent shall submit to the Department documentation demonstrating compliance with the Talley Closure Trust requirements in paragraphs 11.1.1 through 11.1.4 of this Order, including a copy of the executed Trust Agreement.

11.1.6. Within sixteen (16) months of the effective date of this Order, Respondent shall: (a) ensure that no less than two hundred thousand dollars (\$200,000) in certified funds are deposited in the Talley Closure Trust; and (b) provide the Department with documentation demonstrating compliance with subparagraph (a). Respondent may use the proceeds from a sale of the Property to fund the Talley Closure Trust.

11.1.7. Escrow Account. In the event that Respondent uses proceeds from the sale of the Property to comply with paragraph 11.1.6, Respondent shall: (a) ensure that within fifteen (15) months of the effective date of this Order, \$200,000 in certified funds are deposited into an escrow account with escrow instructions that direct the escrow officer, upon the close of escrow, to deposit the \$200,000 into the Talley Closure Trust; and (b) provide the Department with documentation demonstrating compliance with subparagraph (a).

11.1.8. Conditional Lien Release. The Department shall, in a timely manner, make a determination regarding whether Respondent is in compliance with paragraphs 11.1.1 through 11.1.4, and 11.1.7. In the event that the Department determines that Respondent has complied with all of the requirements of paragraphs 11.1.1 through 11.1.4, and 11.1.7, the Department shall promptly:

(a) submit to the escrow officer for the escrow referenced in paragraph 11.1.7, the Department's conditional lien release(s) for any lien(s) recorded pursuant to paragraph 10, with instructions that the lien release(s) shall not be effective and shall not be recorded unless and until the deposit of \$200,000 in certified funds in the Talley Closure Trust in accordance with paragraph 11.1.6; and

(b) provide written notice to BOE and Respondent stating that conditioned upon the deposit of \$200,000 in certified funds in the Talley Closure Trust: (i) the Respondent will have satisfied the conditions for settlement of its disputed fee liability; and (ii)

pursuant to Health and Safety Code section 25205.23, the Department will release Respondent from liability for hazardous waste fees and all interest thereon owed prior to the effective date of this Order. The written notice shall also request that BOE submit to the escrow officer for the escrow referenced in paragraph 11.1.7, conditional lien release(s) for any BOE lien(s) referenced in paragraph 4.2, with instructions that the lien release(s) shall not be effective and shall not be recorded unless and until \$200,000 in certified funds have been deposited in the Talley Closure Trust in accordance with paragraph 11.1.6.

11.1.9. In the event that the Department determines that Respondent has failed to comply with the requirements in paragraphs 11.1.1 through 11.1.7 of this Order, the Department will not request that BOE release its lien pursuant to Health and Safety Code section 25205.23; and the Department will not release its lien(s) recorded pursuant to paragraph 10. Nothing in this Stipulation shall prevent the Department from recording a lien on the Property as permitted by law.

11.1.10. The Talley Closure Trust shall not be deemed to satisfy the financial assurance requirements of California Code of Regulations, title 22, section 66265.143. The Department may require the Respondent to provide additional financial assurance for closure costs in compliance with the California Code of Regulations, title 22, section 66265.143.

11.1.11. After full payment of the costs addressed in paragraph 11.1.3, the Department shall authorize the Trustee to remit any funds remaining in the Talley Closure Account to Respondent.

11.2. Property Closure.

11.2.1. Within fifteen (15) months of the effective date of this Order, Respondent shall ensure that a closure plan for the Property in compliance with California Code of Regulations, title 22, section 66265.112, is prepared for the Property and submitted to the Department for approval, unless a closure plan for the Property has already been approved by the Department. The Department agrees to conduct an expedited review of the closure plan, and to provide Respondent with a decision on the closure plan in a timely manner.

11.2.2. Within ninety (90) days of the Department's approval of a closure plan for the Property, Respondent shall ensure that closure of the Property is commenced.

11.2.3. Respondent shall ensure that closure of the Property is completed in accordance with an approved closure plan and the provisions of California Code of Regulations, title 22, section 66265.111.

11.3. Transfer of the Property

11.3.1. In the event that Respondent transfers or assigns an interest in the Property, at least thirty (30) days prior to the transfer or assignment of an interest in the Property, Respondent shall: a) provide the Department with Written notice of the intent to transfer or assign an interest in the Property; and b) provide the successor-in-interest with a copy of this Order.

11.3.2. In the event that Respondent transfers or assigns an interest in the Property and Respondent fails to comply with the Schedule for Compliance in Section 11 of ~~this~~ Order, Respondent shall pay to the Department all proceeds from the transfer or assignment of the Property, less reasonable costs of sale as determined by the Department and less any proceeds paid to the Talley Closure Trust, within fifteen (15) days of the receipt of the Department's written notice of failure to comply. Respondent's liability to the Department as set forth in ~~this~~ Order, shall be reduced by the amount of Respondent's payments made pursuant to this paragraph.

11.3.3. The Department agrees to provide any bonafide prospective purchaser of the Property with an opportunity to discuss the possibility of entering into a Prospective Purchaser Agreement. This Stipulation does not bind or oblige the Department to enter into such an Agreement.

GENERAL PROVISIONS

12. Payments. With the exception of payments to the Talley Closure Trust pursuant to paragraph 11.1.6 of this Stipulation, all payments required pursuant to this Stipulation shall be made by certified or cashier's check, payable to the Department of Toxic Substances Control, and shall include on the face of the payments the docket number (HWCA 94/95-069) for this proceeding. Payments shall be delivered to:

Accounting Office
Department of Toxic Substances Control
1001 I Street, 21st Floor
P. O. Box 806
Sacramento, CA 95812-0806.

Copies of such payments shall also be sent to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, CA 91201

13. Submittals and Notice. All submittals and notices to the Department pursuant to this Order shall be sent simultaneously to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, California 91201

14. Requirements of the Department. The duties imposed on Respondent by this Order shall be construed to be requirements of the Department issued pursuant to the HWCL. Any violation of this Order is separate and in addition to any violations of any provision of HWCL, and may subject Respondent to penalties and any other remedies provided by the provisions of the HWCL and other applicable provisions of law.

15. Communications. All approvals and decisions made by the Department regarding submittals and notifications will be communicated to Respondent in writing by a Branch Chief of the Department or his/her designee. No informal advice, guidance, suggestions or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required by this Order.

16. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may, after providing the Respondent notice and a reasonable opportunity to cure the non-compliance, (a) modify the document as deemed necessary by the Department and approve

he document as modified, or (b) return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

17. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety.

18. Endangerment During Implementation. In the event that the Department determines that any circumstances or activities (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the Property or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

19. Property Access. Access to the Property shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that the Department or any agency may otherwise have by operation of law. The Department and its authorized representatives may enter and move freely about the Property at all reasonable times for purposes including but not limited to (1) inspecting records, operating logs and contracts relating to the Property, (2) reviewing the progress of Respondent in carrying out the terms of this Order, and (3) conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling, testing, monitoring and other data generated by Respondent or on its behalf, in any way pertaining to work undertaken pursuant to this Order. The Respondent reserves the right to claim that certain documents are privileged, and may not be inspected or copied.

20. Additional Enforcement Actions. By entering into this Order, the Department does not waive the right to take further enforcement actions for matters not covered

by this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as necessary to protect public health or welfare or the environment.

21. Government Liabilities. The State of California shall not be liable for any injury or damage to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to or guarantor of any contract entered into by Respondent, their directors, *officers*, employees, agents, representatives or contractors in carrying out activities required pursuant to this Order.

22. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated herein upon approval by the Department.

23. Extension Request. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for delay.

24. Extension Approvals. The Department shall have sole discretion to determine whether or not to grant any extension requests. If granted, the Department shall specify in writing a new compliance schedule.

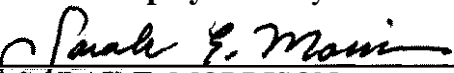
25. Modification of Order. This Order may be modified upon written approval of all of the parties hereto.

26. Parties Bound. This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Order.

1 Approved as to Form and Content:

2 BILL LOCKYER, Attorney General
of the State of California
3 RICHARD FRANK,
4 Chief Assistant Attorney General
5 THEODORA BERGER,
6 Assistant Attorney General
7 SARA H. MORRISON,
8 LAURIE R. PEARLMAN,
9 Deputy Attorneys General

10 Dated: Spt. 9, 2003

11 By: 
12 SARAH E. MORRISON

13 Attorneys for Department of
14 Toxic Substances Control

15 LATHAM & WATKINS
16 JOHN BEESON
17 ANNA ARMARANDOS
18 SHANDA STEPHENSON

19 Dated: Aug 5, 2003

20 By: 

21 Attorneys for Talley Brothers